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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,952	10/22/2003	Klaus Abraham-Fuchs	32860-000651/US	4021
30596	7590	06/20/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O.BOX 8910 RESTON, VA 20195			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,952

Applicant(s)

ABRAHAM-FUCHS ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-11, 13-14, 16-19, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Yarin et al. 6,294,999 B1.

Note to applicant: although the claims via motor vehicle comprising the body of the claim the vehicle is not affirmatively recited in the body of the claim. As such, as long as each reference can be used within a vehicle the claim is properly rejected. In regards to Yarin et al. below the smart tray is portable and can be used within a motorized vehicle.

Claim 1. A motor vehicle, comprising:

assistance means (12) for assisting at least one of a diagnosis, therapy and prophylactic treatment on a person who is in the vehicle;

electronic data processing means (12) for at least one of actuating and interrogating the assistance means; and

at least one of means,

activatable by the assistance means, (step 120) for requesting the person to perform an action, and

identification means, connected to the electronic data processing device, for identifying the person and for at least one of actuating and interrogating the assistance means on the basis of the result of the identification of the person.

Claim 2. The motor vehicle as claimed in claim 1, wherein the assistance means includes measuring means for measuring physiological parameters for the person. (70)

Claim 3. The motor vehicle as claimed in claim 1, wherein the activatable means comprises a medicaments dispenser for providing medicaments in at least one of solid and liquid forms such that they are removable by the person. (34)

Claim 4. The motor vehicle as claimed in claim 1, wherein the activatable means includes communication means for at least one of the output of information to and input of information by the person. (35)

Claim 6. The motor vehicle as claimed in claim 1, wherein the electronic data processing device accesses a data communication link in order to interchange data with an electronic patient record. (figure 2)

Claim 7. The motor vehicle as claimed in claim 1, wherein the electronic data processing device accesses a data communication link in order to receive information on the basis of an evaluation of the data ascertained by the assistance means. (figure 2)

Claim 8. The motor vehicle as claimed in claim 7, wherein the information received is at least one of health-related recommendations and instructions. (figure 8)

Claim 9. The motor vehicle as claimed in claim 2, wherein the physiological parameters include at least one of blood pressure and heart rate. (70)

Claim 10. The motor vehicle as claimed in claim 2, wherein the activatable means comprises a medicaments dispenser for providing medicaments in at least one of solid and liquid forms such that they are removable by the person. (figure 3, column 3, lines 27-41)

Claim 11. The motor vehicle as claimed in claim 2, wherein the activatable means includes communication means for at least one of the output of information to and input of information by the person. (35)

Claim 13. The motor vehicle as claimed in claim 2, wherein the electronic data processing device accesses a data communication link in order to interchange data with an electronic patient record. (figure 2)

Claim 14. The motor vehicle as claimed in claim 2, wherein the electronic data processing device accesses a data communication link in order to receive information on the basis of an evaluation of the data ascertained by the assistance means. (figure 2)

Claim 16. A device for use in a vehicle, comprising:

assistance means (12) for assisting at least one of a diagnosis, therapy and prophylactic treatment on a person in the vehicle;

electronic data processing means (12) for at least one of actuating and interrogating the assistance means; and

at least one of

means, activatable by the assistance means, for requesting the person to perform an action (step 120), and

identification means, connected to the electronic data processing device, for identifying the person and for at least one of actuating and interrogating the assistance means on the basis of the result of the identification of the person.

Claim 17. The device as claimed in claim 16, wherein the assistance means includes measuring means for measuring physiological parameters for the person (70).

Claim 18. The device as claimed in claim 16, wherein the activatable means comprises a medicaments dispenser (34) for providing medicaments in at least one of solid and liquid forms such that they are removable by the person.

Claim 19. The device as claimed in claim 16, wherein the activatable means includes communication means (35) for at least one of the output of information to and input of

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information by the person.

Claim 21. The device as claimed in claim 16, wherein the electronic data processing device accesses a data communication link in order to interchange data with an electronic patient record.

(fig 2)

Claim 22. The device as claimed in claim 16, wherein the electronic data processing device accesses a data communication link in order to receive information on the basis of an evaluation of the data ascertained by the assistance means. (fig 2)

Claim 23. The device as claimed in claim 22, wherein the information received is at least one of health-related recommendations and instructions. (fig 2)

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 5, 12, 16 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Woltermann et al. US Patent Number 6,599,243 B2.

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Claim 1. A motor vehicle, comprising:

assistance means (200) for assisting at least one of a diagnosis, therapy and prophylactic treatment on a person who is in the vehicle;

electronic data processing means (200) for at least one of actuating and interrogating the assistance means; and

at least one of means,

activatable by the assistance means, (250) for requesting the person to perform an action, and

identification means, connected to the electronic data processing device, for identifying the person and for at least one of actuating and interrogating the assistance means on the basis of the result of the identification of the person.

Claim 2. The motor vehicle as claimed in claim 1, wherein the assistance means includes measuring means for measuring physiological parameters for the person. (112, 114, 116)

Claim 5. The motor vehicle as claimed in claim 1, wherein the electronic data processing device is connected to means for acquiring data about the current road traffic situation and for at least one of actuating and interrogating the assistance means on the basis of these data. (160, 160' and 165)

Claim 12. The motor vehicle as claimed in claim 2, wherein the electronic data processing device is connected to means for acquiring data about the current road traffic situation and for at least



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one of actuating and interrogating the assistance means on the basis of these data. (160, 160' and 165)

Claim 16. A device for use in a vehicle, comprising:

assistance means (200) for assisting at least one of a diagnosis, therapy and prophylactic treatment on a person in the vehicle;

electronic data processing means (200) for at least one of actuating and interrogating the assistance means; and

at least one of

means, activatable by the assistance means, (250) for requesting the person to perform an action , and

identification means, connected to the electronic data processing device, for identifying the person and for at least one of actuating and interrogating the assistance means on the basis of the result of the identification of the person.

Claim 20. The device as claimed in claim 16, wherein the electronic data processing device is connected to means for acquiring data about the current road traffic situation and for at least one of actuating and interrogating the assistance means on the basis of these data. (160, 160' and 165)

***Claim Rejections - 35 USC § 103***

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yarin et al. US Patent Number 6,294,999 B1.

In regards to claims 15 and 24, Yarin et al. discloses the use of exercise equipment, logging that data to be sent to the physician to modify the dosage regimen and obtaining feedback from a physician regarding medication but not does not specifically state the feedback being physiotherapy exercises and posture exercises. However, this difference is only found in the nonfunctional data transmitted to the article of manufacture. Data identifying physiotherapy exercises and posture exercises is not functionally related to the substrate of the article of manufacture. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit any data to the article of manufacture as shown in Yarin et al. because such data does not functionally relate to the substrate of the article of manufacture and merely labeling the data differently from that in the prior art would have been obvious. See *Gulack* cited above.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723.

The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Astorino  
May 26, 2005